

# Town of Kennebunk, Maine

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## 6-10 SHELLFISH CONSERVATION ORDINANCE

1) **Authority:** This ordinance is enacted in accordance with 12 M.R.S.A. Section 6671.

2) **Purpose:** To establish a shellfish conservation program for the Town of Kennebunk which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means, which include:

Licensing.

Limiting the number of shellfish harvesters.

Restricting the time and area where digging is permitted.

Limiting the minimum size of clams taken.

Limiting the amount of clams taken daily by a harvester.

3) **Shellfish Committee:** The Shellfish Conservation Program for the Town of Kennebunk will be administered by the Shellfish Committee consisting of five members and two alternates to be appointed by the Board of Selectmen.

The Committee's responsibilities include:

Establishing annually, in conjunction with the Department of Marine Resources (DMR), the number of shellfish harvesting licenses to be issued.

Reviewing annually the status of the resource using the results of clam flat, harvester or dealer surveys and other sources of information and preparing, in conjunction with and subject to the review of the DMR, a plan for implementing conservation measures.

Submitting an annual budget to the Town for the expenditures of funds for the purpose of shellfish conservation.

Keeping this ordinance under review and making recommendations for its amendments.

Securing and maintaining records of shellfish harvest from the town's managed shellfish areas and closed areas that are conditionally opened by the DMR.

Recommending conservation closures and openings to the Board of Selectmen in conjunction with the area biologists of the DMR.

Submitting an annual report covering the above topics and all other committee activities to the Town of Kennebunk and to the DMR.

All regulatory decisions hereunder, except those relating to individual licenses, shall be forwarded to the Board of Selectmen who shall have authority to stay effectiveness thereon by so voting within 14 days of receipt by the Board of Selectmen, in which case the Board of Selectmen shall hold a public hearing thereon within 14 days thereafter, at which time the Shellfish Committee shall appear and explain its proposed regulatory decision.

#### 4) **Definitions:**

A. **Resident:** For the purpose of this Ordinance, the term “Resident” shall mean a person who owns or rents real estate within the Town of Kennebunk, which is his or her permanent, fixed place of abode and principle place of residence. If a person claiming to be a resident neither owns nor rents real estate, they shall be required to produce such other evidence of municipal residency as may be required by the Town Clerk. A person shall not qualify as a resident of this Municipality unless he or she has maintained a permanent, fixed place of abode and principal place of residence within the Town of Kennebunk for three (3) months prior to the date his/her claim of municipal residence is made. A person shall cease to be a resident of the Municipality on the date he/she acquires a permanent, fixed place of abode and principle place of residence in any other Municipality or moves from the Town of Kennebunk.

B. **Nonresident:** The term “nonresident” means anyone not qualified as a resident under this ordinance.

C. **Shellfish:** Clams and Inter-tidal Shellfish Resources: When used in context of this ordinance the words "shellfish", “clams”, and "inter-tidal shellfish resources" mean soft shell clams (*Mya arenaria*).

D. **Municipality:** Refers to the Town of Kennebunk, Maine.

5) **Licensing:** A municipal shellfish harvesting license is required.

It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this ordinance.

No license shall be granted hereunder for any commercial digging.

#### A) **Designation, Scope and Qualifications:**

1) **Residential Recreational Shellfish License:** This license is available to either residents or to real estate tax payers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself and his family, but only during the shellfish harvesting season as established by the Shellfish Committee. Clams harvested cannot be sold or bartered.

2) **Nonresident Recreational Shellfish License:** This license is available to any nonresident of this municipality and entitles the holder to dig and take not more than one peck of shellfish in any one day for the use of himself and his family only during the shellfish harvesting season as established by the Shellfish Committee. Clams harvested cannot be sold or bartered.

3) **License must be signed:** The licensee must sign the license to make it valid.

B) **Application Procedure:** Any person may apply to the Town Clerk for the licenses required by this ordinance on forms provided by the municipality.

1) **Contents of Application:** The application must be in the form of an affidavit and must contain the applicant's name, current legal address, birth date, height, weight, signature and whatever other relevant information the municipality may require.

2) **Misrepresentation:** Any person who gives false information on a license application will cause said license to become invalid and void.

C) **Fees:** The fees for the licenses are as stated below, are for the Town's fiscal year and must accompany in full the application for the respective license. The Town Clerk shall pay all fees received to the Town Treasurer. Fees received for shellfish licensing shall be used by the town for shellfish management, conservation and enforcement.

Resident Recreational: \$20

Nonresident Recreational: \$40

D) **Limitation of Diggers:** Since clam resources vary in density and size distribution from year to year and over the limited soft shell clam producing area of the town, it is essential that the town carefully husband its shellfish resources. If, following the annual review of the town's clam resources, its size distribution, abundance, and the warden's reports, as required by Section 3, the Shellfish Committee, in consultation with the DMR area biologist, determines that limiting shellfish licenses for the following year is an appropriate shellfish management option, then it may do so.

The Shellfish Committee will determine the exact time and location of the shellfish beds that will be open for harvest in any given year. The harvesting season will be in the fall, winter and spring months as June, July, August and September shall be excluded. Harvesting may also be limited to Saturdays, Sundays, and holidays, with hours beginning one hour before sunrise, and ending one hour after sunset, if the Shellfish Committee so determines.

Four months prior to the opening of the flats for harvesting, the committee shall report its findings and document recommendations for the number of recreational licenses to be made available for the following license-year to the Commissioner of DMR for concurrence.

After receiving approval of the proposed number of licenses to be made available from the Commissioner of DMR, and prior to 1 2 months before opening, the Shellfish Committee shall notify the Town Clerk in writing of the number of shellfish licenses to be issued.

Notice of the number of licenses to be issued and the procedure for application shall be published in a newspaper with general circulation in Town, which the Town Clerk considers effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the Municipal Offices until the period concludes.

The Town Clerk shall issue licenses to residents and nonresidents as allocated (Section E) for two weeks before the harvesting season commences. Any resident license unsold 30 days after the season opening can be offered to nonresidents.

Licenses may be returned to the town voluntarily, and reissued to another person at the current fee according to the priorities established in this section.

The only accepted method of harvesting will be by use of the hand-held clam rake, with tines two (2) inches apart, and with a handle no more than eighteen (18) inches long.

E) **Licensing:** Date(s) for obtaining a shellfish license shall be determined annually by the Shellfish Committee.

For each license category, the Town Clerk shall issue licenses in the following manner:

Residents: 90% of total number of licenses determined available

Nonresidents: 10 % of total number of licenses determined available

F) **License Expiration Date:** Each license issued under authority of this ordinance expires at midnight on the last day of the open harvesting season for the year for which it was issued.

**G) Fee Waivers:**

- 1) Recreational shellfish license fees will be waived for residents 65 years or older and 12 years or younger under adult supervision.
- 2) For persons over 65 years of age, two people can dig one peck on one license, two forks and one basket.
- 3) A license holder may have a guest, or guests assist him in the harvesting of shellfish as long as no more than one peck in total of shellfish is taken per license in any one day.

**H) Suspension:** If the Police Department presents to the Town Clerk evidence that any licensee has been convicted of two violations of this Ordinance within the license (July 1 to June 30) year, the Town Clerk shall give the licensee seven (7) days notice of the suspension of the license for thirty (30) days, stating the reason for the suspension. The licensee has the right to meet with the Town Clerk during that seven (7) day period to review the evidence of convictions in the Town Clerk's possession, and to present any evidence showing the licensee does not have the convictions. A third conviction of violations of this Ordinance in the same licensed year will result in forfeiture of the license for the remainder of the licensed year.

**I) Opening and Closing of the Flats:** The Board of Selectmen, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvesting. Upon recommendations of the Shellfish Committee, and the DMR area biologist, that the status of shellfish resources and other factors bearing on sound management indicate that an area should be opened or closed, the Board of Selectmen shall call a public hearing, and shall send a copy of the notice to the DMR. The decision of the Board of Selectmen made after the hearing shall be based on findings of fact.

**J) Minimum Legal Size of Soft Shell Clams:** It is unlawful for any person to possess soft shell clams within the municipality, which are less than two (2) inches in the longest diameter except as provided below. Undersized clams will be set on top of the mud/sand, and the digger shall spread a thin layer of mud/sand over them before leaving the area.

**Definitions:**

- 1) **Lot:** The word "lot" as used in this ordinance means the total number of soft shell clams in any one peck. Where soft shell clams are in a box, barrel or other container, the contents of each box, barrel, or other container constitutes a separate lot.
- 2) **Possess:** For the purpose of this section. "Possess" means dig, take, harvest, ship, transport and hold soft shell clam shell stock.

3) **Tolerance:** Any person may possess soft shell clams that are less than two inches if they comprise less than 10% of the lot.

K) **Penalty:** A person who violates this ordinance shall be punished as provided by 12 M.R. S.A. Section 6671(10) by a fine of up to \$1500 per offense.

L) **Effective Date:** This ordinance, which has been approved by the Commissioner of DMR, shall become effective after its adoption by the municipality.

M) **Period of Ordinance:** This ordinance shall be reviewed by the Shellfish Committee every three years from the effective date of said ordinance and simultaneously forwarded to DMT for its review.

N) **Separability:** If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this ordinance.

O) **Repeal:** Any ordinance regulating the harvesting or conservation of shellfish in the town is hereby repealed, and any other ordinance inconsistent is hereby deemed subordinate to the provisions hereof.

APPROVED AT TOWN MEETING JUNE 13, 2001